



**OFFICE OF
THE ATTORNEY GENERAL
AUSTIN, TEXAS**

**ORDER REPEL R3
XXXXXXXXXX**

Honorable T. M. Triable
First Assistant
State Superintendent of Public Instruction
Austin, Texas

Dear Sir:

Opinion No. O-6778

Re: Salaries of County Superintendents
in counties having a scholastic
population of less than 8,001.

Your request for opinion has been received and
carefully considered by this department. We quote from your
request as follows:

"In a recent opinion which you gave
to the County Attorney of Morris County you
held that the County Superintendent of Schools
of that County was entitled, in addition to
the \$600 raise which was granted him as county
superintendent of a county coming within his
population bracket, but also an additional
\$600 raise by the County Board as a result of
their taking advantage of the following provision
of the law- 'Provided, however, that in no in-
stance shall the salaries as herein provided be
more than Six Hundred Dollars (\$600) increase
over the present salaries for the same scholastic
population bracket.'

"As the legal adviser for this Depart-
ment will you instruct us as to whether we are
to allow county superintendents in counties having
scholastic populations of less than 8,001 a salary
increase of \$1,200 a year, provided the county
boards of trustees grant such an increase in salary."

H. B. 292, 49th Legislature of Texas, reads in
part as follows:

"BE IT ENACTED BY THE LEGISLATURE OF THE
STATE OF TEXAS.

"Section 1. That Article 2700, Revised Civil Statutes, Texas, 1925, as amended by House Bill No. 328, Acts Forty-eighth Legislature, Regular Session, 1948, is amended to hereafter read as follows:

"Section 1. Salary of County Superintendent. The elective County Superintendents of Public Instruction shall receive from the Available School Fund of their respective counties annual salaries based on the scholastic population of such counties as follows:

"Population	Amount
3000 or less.	\$2,400.00
3,001 to 4,000	2,600.00
4,001 to 5,000.	2,800.00
5,001 to 6,000.	3,000.00
6,001 to 7,000.	3,200.00
7,001 to 8,000.	3,400.00

" . . . Provided, however, in counties having less than eight thousand and one (8,001) scholastics, where the total expense for office assistants does not exceed Twenty-four Hundred Dollars (\$2,400.00) per annum, the salary of the County Superintendent may be set at a sum not to exceed Thirty-six Hundred Dollars (\$3,600) per annum by action of the County Board of Trustees. Provided, however, that in no instance shall the salaries as are herein provided be more than Six Hundred Dollars (\$600) increase over the present salaries, for the same scholastic population bracket."

The Governor filed House Bill 392, without his approval, in the Office of the Secretary of State on June 25, and we have just obtained a copy of same. This bill was passed by the House by the following vote: Yeas 180, Nays 2, and the House concurred in Senate amendments by the following vote: Yeas 104, Nays 0. It was passed by the Senate by the following vote: Yeas 28, Nays 0. It is, therefore, in immediate effect, but there will be no funds with which to pay the increased salaries until after September 1, 1948. We quote the following from Section 1 of the Act:

"In making the annual budget for the county administration expense, the County School Trustees shall make an allowance out of the State Available School Fund for the salary and expenses

for the office of the county superintendent and the same shall be determined by the resident scholastic population of the county. It shall be the duty of the County Board of Trustees to file the budget for county administration expense with the State Department of Education on or before September first of each scholastic year, the budget to be approved and certified to by the President of the County Board of Education and attested to by the County Superintendent. The compensation herein provided for shall be paid monthly upon the order of the County School Trustees; provided that the salary for the month of September shall not be paid until the County Superintendent presents a receipt from the State Superintendent showing that he has made all reports required of him."

Opinion No. O-6623 of this department (the Morris County opinion referred to in your letter) is in point and we think clearly answers the questions you have in mind. This opinion construed H. B. 292, *supra*, and determined the maximum salary of the County Superintendent of Morris County under the facts stated. The request for opinion (in No. O-6623) was in part as follows:

"I have been requested by the County Superintendent of Morris County for an interpretation of House Bill No. 292 of the Forty-ninth Legislature amending Article 2700, Revised Civil Statutes, Texas, 1925, as amended by House Bill No. 328, Acts, Forty-eighth Legislature, Regular Session, 1943, pertaining to the salaries of elective County Superintendents and other provisions.

"The scholastic population of Morris County for the school year 1944-45 is 3011. The County Superintendent received an annual salary of Two Thousand Dollars (\$2000) as provided by statute. The salary of the County Superintendent under House Bill 292 of the Forty-ninth Legislature raises this salary to Twenty Six Hundred Dollars (\$2600) annually with a special clause of Section 1, allowing a further raise, which reads as follows:

"Provided, however, in counties having less than eight thousand and one (8,001) scholastics, where the total expense, for office assistants does not exceed Twenty Four Hundred Dollars (\$2400) per annum, the salary of the County Superintendent may be

set at a sum not to exceed Thirty Six Hundred Dollars (\$3600) per annum by action of the County Board of Trustees. Provided, however, that in no instance shall the salaries as are herein provided be more than Six Hundred Dollars (\$600) increase over the present salaries, for the same scholastic population bracket.'

"The County Board of Trustees of Morris County voted unanimously to pay the County Superintendent Thirty Six Hundred Dollars (\$3600) annually taking this action under House Bill No. 292. The total expense for office assistants is Eighteen Hundred Dollars (\$1800).

"I would appreciate a ruling on the construction to be placed on Section 1, of House Bill No. 292, Forty-ninth Legislature, and especially that part reading:

"Provided, however, that in no instance shall the salaries as herein provided be more than Six Hundred Dollars (\$600) increase over the present salaries for the same scholastic population bracket.'

insofar as it concerns the legality of the County Superintendent of Morris County receiving an annual salary of Thirty-six Hundred Dollars (\$3600)."

In answer to said request (No. O-6623) we said:

"This budget is for the school year beginning September 1, 1945. The present budget for the Superintendent of Morris County was based on his salary of \$2,000.00 per annum and, therefore, no more than \$166.66 per month may be paid to him until the new budget for 1945-46 is in effect. You are, therefore, advised that no change is made by this law in the salary of the County Superintendent until after September 1, 1945.

"It is our further opinion that after such time (Sept. 1, 1945) and after the 1945-46 budget is in effect) the maximum salary which can be allowed to the County Superintendent of Morris County will be the sum of \$266.66 per month. This amount is based upon the maximum annual salary allowable under H. B. 292 which we hold to be the sum of \$3,200.00 per annum.

"We also wish to clearly point out that salary increases for public officials are clearly prospective and are not retroactive. This has been the uniform holding of the courts and of this department. Therefore as pointed out above, when the salary increase becomes effective, the County Superintendent's salary (of Morris County) cannot exceed the sum of \$266.66 per month."

We enclose herewith a copy of Opinion No. O-6623.

We think opinion No. O-6623 is correct and we hereby confirm same.

Our construction of the above quoted provisions of H. B. 292 with reference to the salaries of the county superintendents affected thereby is shown by the schedule below.

Population	Minimum Salary under H. B. 292	Maximum salary that can be allowed by action of the County Board of Trustees
3,000 or less	\$2,400	\$3,000
3,001 to 4,000	2,600	3,200
4,001 to 5,000	2,800	3,400
5,001 to 6,000	3,000	3,600
6,001 to 7,000	3,200	3,800
7,001 to 8,000	3,400	3,600

However, we wish to point out further that a County Board of Trustees may make such a salary increase as shown in the above schedule only when the total expense for office assistants in the County Superintendent's office in such a county does not exceed the sum of \$2400.00 per annum.

Also, as pointed out more particularly in Opinion No. O-6623, no changes are made in the salaries of said county superintendents until after September 1, 1945, and after the 1945-46 budget is in effect and also such salary increases are prospective and not retroactive.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By /s/ Wm. J. Fanning
Assistant

WJF:BT:jrb

APPROVED AUG. 14, 1945

/s/ Carlton Ashley

FIRST ASSISTANT ATTORNEY GENERAL

APPROVED OPINION COMMITTEE
By BWB, Chairman